

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

EVETTE TIPPETT,)
vs.) Plaintiff,) Case No. 2:12-cv-01333-GMN-CWH
MICHAEL J. ASTRUE,)) ORDER
COMMISSIONER OF SOCIAL)
SECURITY ADMINISTRATION,)
Defendant.)

This matter was referred to the undersigned Magistrate Judge on Plaintiff's Application for Leave to Proceed *In Forma Pauperis* (#1), filed July 27, 2012.

I. *In Forma Pauperis* Application

Plaintiff has submitted the affidavit required by 28 U.S.C. § 1915(a) showing an inability to prepay fees and costs or give security for them. Accordingly, the request to proceed in forma pauperis will be granted.

II. Screening the Complaint

Upon granting a request to proceed *in forma pauperis*, a court must additionally screen the complaint pursuant to § 1915(a). Federal courts are given the authority dismiss a case if the action is legally "frivolous or malicious," fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). When a court dismisses a complaint under § 1915(a), the plaintiff should be given leave to amend the complaint with directions as to curing its deficiencies, unless it is clear from the face of the complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

1 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint for
2 failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is essentially a
3 ruling on a question of law. *North Star Intern. v. Arizona Corp. Comm'n*, 720 F.2d 578, 580 (9th Cir.
4 1983). In considering whether the plaintiff has stated a claim upon which relief can be granted, all
5 material allegations in the complaint are accepted as true and are to be construed in the light most
6 favorable to the plaintiff. *Russell v. Landrieu*, 621 F.2d 1037, 1039 (9th Cir. 1980).

7 Plaintiff's complaint challenges a decision by the Social Security Administration ("SSA")
8 denying benefits. Prior to filing suit, a plaintiff must exhaust administrative remedies. *See* 42 U.S.C.
9 § 405(g); *see also Bass v. Social Sec. Admin.*, 872 F.2d 832, 833 (9th Cir. 1989) (per curium) ("Section
10 405(g) provides that a civil action may be brought only after (1) the claimant has been party to a hearing
11 held by the Secretary, and (2) the Secretary has made a final decision on the claim"). Generally, if the
12 SSA denies a claimant's application for disability benefits, he can request reconsideration of the
13 decision. If the claim is denied at the reconsideration level, a claimant may request a hearing before an
14 Administrative Law Judge ("ALJ"). If the ALJ denies the claim, a claimant may request review of the
15 decision by the Appeals Council. If the Appeals Council declines to review the ALJ's decision, a
16 claimant may then request judicial review. *See generally* 20 C.F.R. §§ 404, 416.

17 Once a plaintiff has exhausted administrative remedies, she can obtain judicial review of an
18 SSA decision denying benefits by filing suit within sixty (60) days after notice of a final decision. *Id.*
19 An action for judicial review of a determination by the SSA must be brought "in the district court of the
20 United States for the judicial district in which the plaintiff resides." *Id.* The complaint should state the
21 nature of Plaintiff's disability, when Plaintiff claims he became disabled, and when and how he
22 exhausted his administrative remedies. The Complaint should also contain a plain, short, and concise
23 statement identifying the nature of Plaintiff's disagreement with the determination made by the Social
24 Security Administration and show that Plaintiff is entitled to relief. A district court can affirm, modify,
25 reverse, or remand a decision if Plaintiff has exhausted his administrative remedies and timely filed a
26 civil action. However, judicial review of the Commissioner's decision to deny benefits is limited to
27 determining: (a) whether there is substantial evidence in the record as a whole to support the findings of
28 the Commissioner; and (b) whether the correct legal standards were applied. *Morgan v. Commissioner*

1 of the Social Security Adm., 169 F.3d 595, 599 (9th Cir. 1999).

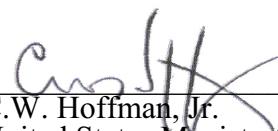
2 Plaintiff alleges that on June 28, 2012, the Appeals Council denied her request for review, and,
3 at that time, the ALJ's decision became the final decision of the Commissioner. Thus, it appears
4 Plaintiff has exhausted her administrative remedies. Plaintiff further alleges that she received notice of
5 the Commissioner's decision on or about July 3, 2012. The complaint requesting judicial review was
6 filed on July 27, 2012. Thus, it also appears that the complaint was timely filed. Accordingly,

7 **IT IS HEREBY ORDERED** that:

- 8 1. Plaintiff's Application to Proceed *In Forma Pauperis* (#1) is **granted**. Plaintiff shall not
9 be required to pre-pay the full filing fee of three hundred fifty dollars (\$350.00).
- 10 2. Plaintiff is permitted to maintain this action to conclusion without the necessity of
11 prepayment of any additional fees or costs or the giving of a security therefor. This
12 Order granting leave to proceed in forma pauperis shall not extend to the issuance of
13 subpoenas at government expense.
- 14 3. The Clerk of Court shall file the Complaint.
- 15 4. The Clerk of the Court shall serve the Commissioner of the Social Security
16 Administration by sending a copy of the summons and Complaint by certified mail to:
17 (1) General Counsel, Social Security Administration, Room 611, Altmeyer Bldg., 6401
18 Security Blvd., Baltimore, Maryland 21235; and (2) the Attorney General of the United
19 States, Department of Justice, 950 Pennsylvania Avenue, N.W., Room 4400,
20 Washington, D.C. 20530.
- 21 5. The Clerk of Court shall issue summons to the United States Attorney for the District of
22 Nevada and deliver the summons and Complaint to the U.S. Marshal for service.
- 23 6. From this point forward, Plaintiff shall serve upon Defendant or, if appearance has been
24 entered by counsel, upon the attorney, a copy of every pleading, motion or other
25 document submitted for consideration by the court. Plaintiff shall include with the
26 original paper submitted for filing a certificate stating the date that a true and correct
27 copy of the document was personally served or sent by mail to the defendants or counsel
28 for the defendants. The court may disregard any paper received by a district judge or

1 magistrate judge which has not been filed with the Clerk, and any paper received by a
2 district judge, magistrate judge or the Clerk which fails to include a certificate of service.

3 Dated this 2nd day of October, 2012.

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6 C.W. Hoffman, Jr.
7 United States Magistrate Judge